

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO.6/98

State of Goa,
represented by Executive Engineer,
Works Division XII,
Irrigation Department,
Gogol, Margao, Goa (403 601). Appellant.

V/s.

Shri Sharad Manilal Gosalia,
Engineer & Contractor,
First Floor, Church Building,
Curchorem, Goa (403 706). Respondent.

Mr. V.P. Thali, Addl. Advocate General for the
appellant.

Mr. C. Mascarenhas, Advocate for the respondent.

CORAM : P.V. HARDAS, J.

DATE : JANUARY 16, 2003.

ORAL JUDGMENT :

This appeal has been filed assailing the order passed by the IInd Addl. Civil Judge, Senior Division, Margao, dated 29.9.1997 in Special Arbitration Suit No.27/96/II, whereby the learned trial Court rejected the objections raised by the present appellant and made the Award the Rule of the Court.

2. During the course of arguments, Mr. C. Mascarenhas, learned Counsel appearing for the respondent has pointed that the objections filed by the

present appellant before the trial Court were beyond the period of limitation, and this point had been raised before the learned trial Court and the learned trial Court has held the objections to be within limitation. According to Mr. Mascarenhas, the learned trial Court proceeded on the ground that the stamp on the objections had been punched on 15.2.1996 and, therefore, according to the learned trial Court, the objections must have been filed in the Court on 15.2.1996. The notice issued by the Court to the appellant, was received by the appellant on 8.2.1996 and, therefore, the objections, if they had been filed on 15.2.1996, were within the prescribed period of limitation of one month. However, if the objections had been filed on 14.3.1996, the objections would, certainly, be beyond the period of one month. In view of this, the record and proceeding had been called for.

3. Perusal of the record and proceeding from the trial Court shows that the objection filed by the appellant at Exhibit-6 does show that the stamp of 00.50 paise affixed on the objections had been punched on 15.2.1996. The objection is also dated 15.2.1996. An affidavit in support of the objections is sworn on 15.2.1996. Since the affidavit has been sworn on 15.2.1996, the stamp came to be punched on 15.2.1996. Therefore, the punching of the stamp on 15.2.1996 would

not indicate that the objections had been filed in the Court on 15.2.1996. It would at the most indicate that the objections had been prepared on 15.2.1996. On Exhibit-6 there is an endorsement of the learned trial Court that the objections had been filed on 14.3.1996. The Roznama dated 14.3.1996 shows that the objections had been filed by the respondent and copy thereof was furnished to the opposite party on 14.3.1996.

4. This Award was passed by the Sole Arbitrator under the Arbitration Act, 1940 and the limitation prescribed for challenging the award under Sections 30 and 33 of the Arbitration Act is of 30 days. Admittedly, the record clearly reveals that the objections at Exhibit-6 had been filed by the present appellant on 14.3.1996, i.e. much beyond the period of 30 days as prescribed under the Act. Notice from the Court was received by the appellant on 8.2.1996. An objection in this behalf had clearly been taken in writing by the present respondent that the objections had been filed beyond the prescribed period of limitation. The appellant persisted with his claim that the objections had been filed on 15.2.1996 and were within the prescribed period of limitation. No attempt had been made by the appellant to file an application for condonation of delay in filing the objections assuming that Section 5 was applicable. It is, thus,

clear that at the threshold, the appeal cannot be entertained as the objections submitted by the appellant were beyond the period prescribed under the Act for filing the objections. The finding of the learned trial Court in this regard that the objection had been filed on 15.2.1996, and, therefore, were within the prescribed period of limitation is clearly incorrect and contrary to record. The record reveals that the objections had been filed on 14.3.1996 which, undisputedly, were beyond the period of limitation.

5. Mr. V.P. Thali, learned Addl. Advocate General, on behalf of the appellant, submitted that he may be permitted to file an application for condonation of delay to explain the delay in filing the objections. The Award of the Arbitrator is dated 30.12.1995. Mr. Mascarenhas states that the first Arbitrator was appointed on 24.7.1992 and the arbitral proceedings had commenced thereafter. The present arbitrator came to be appointed on 22.5.1995 and had passed the Award on 30.12.1995. The contract is of the year 1983. The learned trial Court had issued notice to the present appellant and the same was received by the appellant on 8.2.1996. Thus, six years have already passed. The appellant was aware that an objection in regard to the limitation had been raised by the present respondent. The appellant chose to proceed on the footing that the

objections were within the prescribed period of limitation. No efforts had been made by the appellant to file an application before the learned trial Court for condonation of delay. The appeal in this Court was filed in the year 1998 and is pending in this Court since then. In view of this, I am not inclined to permit the appellant to file an application for condonation of delay in filing the objections before the trial Court. The learned trial Court has also dealt with the objections of the appellant on merits and has rejected the same. The Award has been made the Rule of the Court. To give an opportunity to the appellant after a lapse of more than 6 years to file an application for condonation of delay, would result in further delay, defeating the object of the Arbitration Act in settling the disputes expeditiously. Any way, the appellant had the opportunity of filing an application for condonation of delay, which the appellant chose not to avail.

6. In view of this, the appeal is dismissed on this ground at the threshold with no order as to costs.

P.V. HARDAS, J.

ssm.